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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/786,333	03/08/2001	Patrick Defay	204252US2 PCT	5071
22850 7590 08/21/2007 OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER VILLECCO, JOHN M	
			ART UNIT 2622	PAPER NUMBER
			NOTIFICATION DATE 08/21/2007	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com  
oblonpat@oblon.com  
jgardner@oblon.com

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 09/786,333	<b>Applicant(s)</b> DEFAY, PATRICK	
	<b>Examiner</b> John M. Villecco	<b>Art Unit</b> 2622	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 31 July 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

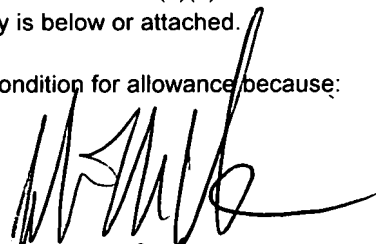
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: 12, 14-22, 29 and 30.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
 13. ☐ Other: \_\_\_\_\_.

  
 8/7/07

Continuation of 11. does NOT place the application in condition for allowance because:

112, 1<sup>st</sup> paragraph rejection

Regarding the 112, 1<sup>st</sup> paragraph rejection of claims 12, 14-22, 29 and 30, applicant argues that the examiner opinion that the details of the viewfinder must be critical is based upon a speculative/hypothetical modification to the actual disclosed camera of Bauer and has used it to insert his own teachings into Bauer and then interpret them to be actual teachings. The applicant points to the fact that page 2 of the final rejection suggests, "If the camera in Bauer were to be drawn without the specifics of the viewfinder, one could easily draw a box, as applicant has done in their disclosure". This logic presented by the examiner was not intended to be hypothetical modification to Bauer. It was used as an analogy to show how very little detail was presented by the applicant in their own specification. Based on the applicant's arguments in the previous office action and in this request for consideration that the prism of Bauer cannot be considered to be part of the viewfinder, the examiner has come to the conclusion that the construction of the viewfinder in applicant's own invention must be an important feature, since the construction of applicant's viewfinder is what is being relied upon to obviate the rejection using Bauer. More specifically, applicant has continually argued that the prism of Bauer cannot be considered to be part of the viewfinder. In order to ascertain the scope of applicant's claimed viewfinder, the examiner read the specification to determine what the applicant actually disclosed as being the viewfinder. After thoroughly reviewing the specification, applicant has merely shown the viewfinder as a box (labeled reference number 3) and discussed the viewfinder in the specification as being an "optical viewfinder". No specific details are given as to the construction of the viewfinder and none of the drawings specifically point out how the optical viewfinder is constructed. Yet, the applicant continues to argue that the prism of Bauer cannot be considered to be part of the viewfinder. Since applicant continues to argue this position, the examiner has come to the conclusion that since the construction of the viewfinder of Bauer is critical to the arguments presented by the applicant, then it must also be critical to the proper understanding of the applicant's invention. Therefore, since no details have been provided by the applicant as to how the optical viewfinder is constructed, the 112, 1<sup>st</sup> paragraph rejection will be maintained.

35 U.S.C. 103 rejection - Prism of Bauer not part of viewfinder

Regarding the 35 U.S.C. 103 rejections to 12, 14-22, 29, and 30, applicant continues to argue that the prism of Bauer cannot be considered to be part of the viewfinder. After looking to applicant's specification to determine what the applicant considers to be their viewfinder, the examiner can find little or no details as to what constitutes applicant's viewfinder. Applicant argues on the bottom of page 4 of the response that the reflecting prism is shown as being separate from the eyepiece (28) and lens system (26). While it is not clear why the applicant can group the eyepiece and lens system together (not the prism) and call it the optical viewfinder, using "the broadest reasonable interpretation consistent with the specification" (MPEP 2111), the examiner is of the opinion that it is reasonable to consider the prism to be part of the optical viewfinder. Furthermore, applicant contends that this constitutes an improper speculative assumption and teaches against what is defined as the viewfinder in Bauer. The examiner disagrees with this assertion. There is disclosure in Bauer that only the eyepiece (26) and lens system (28) constitutes the viewfinder. In fact, the term "viewfinder" isn't even used in the disclosure. Therefore, what constitutes the viewfinder in Bauer is not defined and thus, it is reasonable to interpret the prism (24) to also be part of the viewfinder, since it is used to direct light to the eye of the user. Again, logic presented by the examiner stating that, "if the camera in Bauer were to be drawn without the specifics of the viewfinder, one could easily draw a box, as applicant has done in their disclosure", was not intended to be hypothetical modification to Bauer. It was used as an analogy to show how very little detail was presented by the applicant in their own specification.

35 U.S.C. 103 rejection - Improper to modify Bauer in view of Ohshima

Applicant argues that the examiner employs hindsight reasoning and that the combination of Ohshima and Bauer would result in a substantial redesign of the system. However, the examiner is of the opinion that converting the film camera of Bauer into an electronic camera is well within the skill of one of ordinary skill in the art. In particular, applicant argues that the addition of much more complex spatial splitter optics and separate sensors as in Ohshima are required. Given the teachings of Ohshima, the addition of the splitter optics and multiple sensors is well within the skill of one of ordinary skill in the art. Furthermore, the examiner has provided rationale for the combination -- the ability to electronically store images, manipulate images, and to transfer images. It is noted that motivation need not come explicitly from the disclosure of a reference, it can also come from the knowledge of one of ordinary skill in the art. Clearly, digital photography has the aforementioned benefits over film photography and one of ordinary skill in the art would have been motivated to modify Bauer as such.

35 U.S.C. 103 rejection - Improper to modify the combination of Bauer and Ohshima using Glenn

Applicant argues that the examiner is improperly interpreting the teaching of Glenn by improperly taking the teaching of Glenn out of context. However, as stated previously in the final rejection, Glenn was used only to show that it is well known in the art to drive a rotating shutter at a speed of rotation proportional to the frequency of a synchronizing signal for reading the sensors. Although, Glenn teaches that the shutter is used to direct incoming light to two different image sensors, the same principle could easily be applied to the driving of one image sensor. By driving the rotating shutter at a speed of rotation proportional to the synchronizing signal for the reading of the sensors, the vertical retrace of the camera can occur when no light from the image is going to the camera. This teaching could easily be applied to the Bauer/Ohshima combination. Applicant contends that a change in the basic principle of operation would occur if the combination were to be made. However, the examiner disagrees with this assertion. The teaching of driving the rotational shutter at a speed of rotation proportional to the frequency of synchronizing signal would merely provide for the vertical retrace of the image sensor of Bauer/Ohshima to occur when no light is going to the camera - a beneficial characteristic of capturing images to eliminate any noise

from frame to frame.